IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.2427 of 2006

Muntaz Raheman Shaikh ..Petitioner

vs.

1. The Chairman,
Maharashtra State Board of
Wakfs and others ..Respondents

Shri P.S.Salvi for petitioner.
Smt.K.A.Sayed for respondent no.1.
Shri R.P.Joshi for respondent nos.2 to 7

CORAM: S.B.MHASE J.
26th April, 2006

P.C.

1. Heard the learned Counsel for the parties.

2. Rule returnable forthwith.

3. According to the petitioner, petitioner is a Mutawalli and sole Trustee of Peer Saheb Bahadur Shah Darga Trust situated at Agashi in Thane District. An application bearing No.MSWB/CH/320 of 2005 was filed against the petitioner under sections 63, 64 and 65 of the Wakf Act for removal of Muttavali. By order dated 6th May, 2005 passed by the Chairman of Wakf Board the petitioner was removed and was directed to hand over the charge of the Darga and its properties including cash and records to the newly constituted Ad-hoc committee. The said order is challenged by filing an application No.08 of 2005 before the Maharashtra Wakf Tribunal, Aurangabad and the Tribunal has passed interim order on 27th June, 2005 that "the

execution of the order under challenge is stayed till filing of say by the respondents. Keept it on 11th July, 2005." The respondents have filed the say. However, the officer of the Member, Maharashtra State Wakf Tribunal at Aurangabad is vacant and, therefore, neither the stay can be extended nor the appeal can be heard. Therefore, the petitioner approached to this Court (Bench at Aurangabad) by filing Writ Petition No.7390 of 2005 and obtained interim orders. However, since the Wakf properties are located within the jurisdiction of the Principal Bench of the High Court the said petition was withdrawn. However, interim order was continued by the said Bench for a period of 3 weeks. That order was passed on 16th March, 2006. Thereafter this petition has been filed before this Court. The learned Counsel for the petitioner submits that the grievance of the petitioner will be redressed if appropriate protection is given to the petitioner in view of the fact that there is no officer appointed to hear and dispose of the matter at Maharashtra Wakf Tribunal at Aurangabad. The respondents have objected to it. However, this Court is inclined to grant relief as prayed for because it is not the fault of the petitioner that the matter could not be heard. On the contrary the law requires that the petitioner should be heard and these matters should be decided on merit but for such a judicial exercise there is no Tribunal constituted by the State of Maharashtra. Therefore, the petition is allowed. The order passed by the Chairman, Maharashtra State Board of Wakfs in MSWB/CH/320 of 2005 on 6th May, 2005 is hereby

stayed till the Govt. of Maharashtra makes the appointment of the officer in the office of Wakf Tribunal at Aurangabad and thereafter for a period of 2 months within which said Tribunal shall dispose of either interim application and/or appeal finally. The petitioner shall maintain the statusquo in respect of the properties of Wakf till final disposal of the appeal.

4. Rule is made absolute accordingly.

(S.B.MHASE J.)